MONTANA LEGISLATIVE HISTORY

Chapter 542 19 79

Bill H _____ S 393 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 12	✓ C	Hearing Date(s)	Feb 15	✓ C
	Mar 23	✓ C		Feb 18	✓ C
		C			C
		C			C
Date Out	Mar 23	✓ C		Feb 19	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

CHAPTER NO. 547

SENATE BILL NO. 393

INTRODUCED BY TOWE

IN THE SENATE

February 6, 1979	Introduced and referred to Committee on Judiciary.
February 19, 1979	Committee recommend bill do pass as amended. Report adopted.
February 20, 1979	Printed and placed on members' desks.
February 21, 1979	Second reading, do pass.
February 22, 1979	Considered correctly engrossed.
February 23, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 27, 1979	Introduced and referred to Committee on Judiciary.
March 24, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1979	Second reading, concurred in.
March 27, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 28, 1979	Returned from second house. Concurred in as amended.
March 30, 1979	Second reading, amendments adopted.

March 31, 1979

Third reading, amendments adopted. Sent to enrolling.

Reported correctly enrolled.

Senate BILL NO. 393

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE TREATMENT OF THE MENTALLY ILL; AMENDING SECTIONS 53-21-102, 53-21-103, 53-21-111, 53-21-112, 53-21-115, 53-21-119, 53-21-120, 53-21-126 THROUGH 53-21-128, 53-21-141, 53-21-165, AND 53-21-188, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(6) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. No correctional institution or facility or jail is a mental health facility within the meaning of this part.

(7) "Next of kin" shall include but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(8) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(9) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(10) "Professional person" means:

(a) a medical doctor; or

(b) a person trained in the field of mental health and certified by the department in accordance with standards of professional licensing boards, federal regulations, and the joint commission on accreditation of hospitals.

(11) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional

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person.

(12) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously mentally ill.

(13) "~~Responsible person~~ Friend of respondent" means any person willing and able to ~~assume responsibility for~~ assist a seriously mentally ill person or person alleged to be seriously mentally ill, in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the ~~including~~ next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a ~~responsible person~~ friend of respondent set out in this part. Only one person may at any one time be the ~~responsible person~~ friend of respondent within the meaning of this part. In appointing a ~~responsible person~~ friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the ~~responsible person~~ friend of respondent.

(14) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health. For this purpose, injury means physical

injury or severe psychological injury. No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part.

(15) "State hospital" means the Warm Springs state hospital."

Section 2. Section 53-21-103, MCA, is amended to read:

"53-21-103. Court records to be kept separate. Records and papers in proceedings under this part shall be maintained separately by the clerks of the several courts. Five days prior to the release of a respondent or patient committed to a mental health facility, the facility shall notify the clerk of the court, and the clerk shall immediately seal the record in the case and omit the name of the respondent or patient from the index or indexes of case in the court unless the court orders the record opened for good cause shown."

Section 3. Section 53-21-111, MCA, is amended to read:

"53-21-111. Voluntary admission. (1) Nothing in this part may be construed in any way as limiting the right of any person to make voluntary application for admission at any time to any mental health facility or professional

person. An application for admission to a mental health facility shall be in writing on a form prescribed by the facility and approved by the department. It is not valid unless it is approved by a professional person and a copy is given to the person voluntarily admitting himself. ~~The form shall--contain--a~~ A statement of the rights of the person voluntarily applying for admission, as set out in this part, including the right to release shall be furnished to the patient within 12 hours.

(2) Any applicant who wishes to voluntarily apply for admission to the state hospital shall first obtain certification from a professional person that the applicant is suffering from a mental disorder and that the facilities available to the mental health region in which the applicant resides are unable to provide adequate evaluation and treatment, except such certification is not necessary if the applicant obtains certification from the regional mental health director of his mental health region that the applicant is financially unable to receive evaluation and treatment from the facilities available to the mental health region.

(3) An application for voluntary admission shall give the facility the right to detain the applicant for no more than 5 days, excluding weekends and holidays, past his written request for release. A mental health facility may

adopt rules providing for detention of the applicant for less than 5 days. The facility must notify all applicants of such rules and post such rules as provided in 53-21-168.

(4) Any person voluntarily entering or remaining in any mental health facility shall enjoy all the rights secured to a person involuntarily committed to the facility."

Section 4. Section 53-21-112, MCA, is amended to read:

"53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a minor who is 16 years of age or older may consent to receive mental health services to be rendered by a facility or a person licensed to practice medicine or psychology in this state.

(2) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment shall be for the same period of time as that for an adult. A minor voluntarily admitted shall have the right to be released within 5 days of his request as provided in 53-21-111(3). The minor himself may make such request. Unless there has been a periodic review and a voluntary readmission consented to by the minor patient and his counsel, voluntary admission terminates at the expiration of 1 year. Counsel shall be appointed for the minor at the minor's request or at any time he is faced with potential legal proceedings.

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(3) If, in any voluntary admission for any period of time to a mental health facility, a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the admission shall be treated as an involuntary commitment. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary admission of a minor to a mental health facility. The notice shall be explained to the minor ~~by the professional person approving the application~~."

Section 5. Section 53-21-115, MCA, is amended to read:

"53-21-115. Procedural rights. In addition to any other rights which may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has the following rights:

(1) the right to notice reasonably in advance of any hearing or other court proceeding concerning him;

(2) the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding concerning him;

(3) the right in any hearing to cross-examine witnesses;

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(4) the right to be represented by counsel;

(5) the right to remain silent;

(6) the right in any hearing to be proceeded against according to the rules of evidence applicable to civil matters generally;

(7) the right to view and copy all petitions on file with the court concerning him;

(8) the right to be examined by a professional person of his choice when such professional person is willing and reasonably available;

(9) the right to be dressed in his own clothes at any hearing held pursuant to this part; and

(10) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing held pursuant to this part."

Section 6. Section 53-21-119, MCA, is amended to read:

"53-21-119. Waiver of rights. (1) A person may waive his rights, or ~~his~~ if the person is not capable of making a intentional and knowing decision, these rights may be waived by his counsel and responsible person acting together if a record is made of the reasons for the waiver. The right to counsel may not be waived. The right to treatment provided for in this part may not be waived.

(2) The right of the respondent to be physically present at a hearing may also be waived by his attorney and

the responsible person with the concurrence of the professional person and the judge upon a finding supported by facts that:

(a) the presence of the respondent at the hearing would be likely to seriously adversely affect his mental condition; and

(b) an alternative location for the hearing in surroundings familiar to the respondent would not prevent such adverse effects on his mental condition.

(3) (a) In the case of a minor, provided that a record is made of the reasons for the waiver, his rights may be waived by the mutual consent of his counsel and parents or guardian or guardian ad litem if there are no parents or guardian.

(b) If there is an apparent conflict of interest between a minor and his parents or guardian, the court shall appoint a guardian ad litem for him."

Section 7. Section 53-21-120, MCA, is amended to read:

"53-21-120. Detention to be in least restrictive environment -- preference for mental health facility -- court relief. (1) A person detained pursuant to this part shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be

considered.

(2) Whenever possible, a person detained pursuant to this part shall be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and trial cannot be held within 7 days, the individual may be sent to the state hospital until time of trial if arrangements can be made to return him to trial. No person may be detained in any hospital or other medical facility which is not a mental health facility unless such hospital or facility has agreed in writing to admit the person.

(3) A person may be detained in a jail or other correctional facility only if no mental health facility is available or if the available mental health facilities are inadequate to protect the person detained and the public. As soon as a mental health facility becomes available or the situation has changed sufficiently that an available mental health facility is adequate for the protection of the person detained and the public, then the detained person shall be transferred from the jail or correctional facility to the mental health facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain."

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Section 8. Section 53-21-126, MCA, is amended to read:

"53-21-126. Trial or hearing on petition. (1) The respondent shall be present unless his presence has been waived as provided in 53-21-119(2), and he shall be represented by counsel at all stages of the trial. The trial shall be limited to the determination of whether or not the respondent is seriously mentally ill within the meaning set forth in this part.

(2) The standard of proof in any hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters, except that mental disorders shall be evidenced to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others shall be evidenced by overt acts, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court shall be present for the trial and subject to cross-examination. The trial shall be governed by the Montana Rules of Civil Procedure except that, if tried by a jury, at least two-thirds of the jurors must concur on a finding that the ~~patient~~ respondent is seriously mentally ill. The written report of the professional person that indicates the professional person's diagnosis may be

attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report. The court may order the trial closed to the public for the protection of the respondent.

(4) The professional person may testify as to the ultimate issue of whether the respondent is seriously mentally ill. This testimony is insufficient unless accompanied by evidence from the professional person or others that:

(a) the respondent is suffering from a mental disorder; and

(b) the mental disorder has resulted in self-inflicted injury or injury to others or the imminent threat thereof or has deprived the person afflicted of the ability to protect his life or health.

~~(4)~~(5) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue."

Section 9. Section 53-21-127, MCA, is amended to read:

"53-21-127. Posttrial disposition. (1) If, upon trial, it is determined that the ~~patient~~ respondent is not seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed.

(2) (a) If it is determined that the respondent is

seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated

alternatives were not deemed suitable. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill."

Section 10. Section 53-21-128, MCA, is amended to read:

"53-21-128. Petition for extension of commitment period. (1) (a) Not less than 2 calendar weeks prior to the end of the 3-month period of detention provided for in 53-21-127(2), the professional person in charge of the patient at the place of detention may petition the court for extension of the detention period. The petition shall be accompanied by a written report and evaluation of the patient's mental and physical condition. The report shall describe any tests and evaluation devices which have been employed in evaluating the patient, the course of treatment which has been undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, his next of kin, if reasonably available, the responsible person appointed by the court, and the patient's counsel. If any person so notified requests a hearing prior to the termination of the previous detention authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the

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request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) Procedure on the petition for extension when a hearing has been requested shall be the same in all respects as the procedure on the petition for the original 3-month commitment except the patient is not entitled to trial by jury. The hearing shall be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any, shall be paid by the county that paid the same costs in the initial commitment proceedings.

(d) If upon the hearing the court finds the patient not seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed. If the court finds that the patient continues to suffer from serious mental illness, the court shall order commitment, custody in relatives, outpatient therapy, or other order as set forth in 53-21-127(2) except that no order may affect his custody for more than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not deemed

suitable. The court shall not order continuation of an alternative which does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) Further extensions may be obtained under the same procedure described in subsection (1) of this section except that the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1) of this section, including a statement of the findings required by subsection (1)."

Section 11. Section 53-21-141, MCA, is amended to read:

"53-21-141. Civil and legal rights of person committed. (1) Unless specifically stated in an order by the court, a person involuntarily committed to a facility for a period of evaluation or treatment does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part except insofar as it may be necessary to detain the person for treatment, evaluation, or care. All communication between an alleged mentally ill person and a professional person is privileged under normal privileged communication rules unless it is clearly

explained to the person in advance that the purpose of an interview is for evaluation and not treatment.

(2) Whenever a person is committed to a mental health facility for a period of 3 months or longer, the court ordering the commitment may make an order stating specifically any legal rights which are denied the respondent and any legal disabilities which are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion of the involuntary commitment if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of involuntary commitment may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) A person who has been committed to a mental health facility pursuant to this part is automatically restored upon the termination of the commitment to all of his civil and legal rights which may have been lost when he was committed. This subsection does not affect, however, a guardianship or conservatorship created independently of the commitment proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. A person who leaves a mental health

facility following a period of evaluation and treatment shall be given a written statement setting forth the substance of this subsection.

(4) A person committed to a mental health facility prior to July 1, 1975, enjoys all the rights and privileges of a person committed after that date."

Section 12. Section 53-21-165, MCA, is amended to read:

"53-21-165. Records to be maintained. Complete patient records shall be kept by the mental health facility and shall be available to any person authorized ~~in writing~~ by the patient in writing to receive these records and upon approval of the authorization by the board. The records shall also be made available to any attorney charged with representing the patient or any professional person charged with evaluating or treating the patient. These records shall include:

(1) identification data, including the patient's legal status;

(2) a patient history, including but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior hospitalization;

(3) the chief complaints of the patient and the chief

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complaints of others regarding the patient;

(4) an evaluation which notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive rather than interpretative fashion;

(5) a summary of each physical examination which describes the results of the examination;

(6) a copy of the individual treatment plan and any modifications thereto;

(7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan which analyzes the successes and failures of the treatment program and directs whatever modifications are necessary;

(8) a copy of the individualized after-care plan and any modifications thereto and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status which includes the signed orders of the prescribing physician. The staff person administering the medication shall indicate by signature that orders have been carried out.

(10) a detailed summary of each significant contact by a professional person with the patient;

(11) a detailed summary, on at least a weekly basis, by

a professional person involved in the patient's treatment, of the patient's progress along the treatment plan;

(12) a weekly summary of the extent and nature of the patient's work activities and the effect of such activity upon the patient's progress along the treatment plan;

(13) a signed order by a professional person for any restrictions on visitations and communications;

(14) a signed order by a professional person for any physical restraints and isolation;

(15) a detailed summary of any extraordinary incident in the facility involving the patient, to be entered by a staff member noting that he has personal knowledge of the incident or specifying his other source of information and initialed within 24 hours by a professional person; and

(16) a summary by the professional person in charge of the facility or his appointed agent of his findings after the 30-day review provided for in 53-21-163."

Section 13. Section 53-21-188, MCA, is amended to read:

"53-21-188. Maintenance of indigent patients on discharge. Prior to the discharge of a committed patient from a mental health facility, the professional person in charge of the facility shall notify the welfare department of the county from which the patient was committed. The county welfare department shall at once ascertain whether

the discharged patient is in financial need. If the patient is found to be in financial need, the county welfare department shall properly care for and maintain the discharged patient under the laws of this state relating to public assistance until the patient is able to care for himself or until another provision has been made for care of the patient."

Section 14. Instructions to the code commissioner. All references to "responsible person" in Title 53, chapter 21, shall be changed to "friend of respondent" by the code commissioner.

-End-

SB 393

Forty-Sixth LEGISLATIVE SESSION

COMMITTEE ON Judiciary - Senate

BEST COPY AVAILABLE

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB-367	2/5/79	2/12/79	2/12/79	2/12/79					
SB-374	2/5/79	2/12/79	2/12/79			2/12/79			
SB-376	2/6/79	2/14/79	2/14/79			2/14/79			
SB-378	2/6/79	2/14/79	2/14/79	2/14/79					
SB-382	2/6/79	2/15/79	2/16/79			2/15/79			
SB-386	2/6/79	2/15/79	2/19/79			2/19/79			
SB-393	2/6/79	2/15/79	2/19/79			2/18/79			
HB-369	2/6/79	3/3/79	3/3/79				3/3/79		
HB-376	2/6/79	3/5/79	3/5/79						3/5/79
SB-394	2/7/79	2/15/79	2/16/79	2/15/79					
SB-404	2/7/79	2/16/79	2/16/79			2/16/79			
SB-409	2/7/79	2/16/79	2/19/79			2/18/79			
HB-32	2/7/79	3/2/79	3/6/79					3/3/79	
SB 420	2/8/79	2/16/79	Tabled 2/18/79						
HB 438	2/8/79	3/15/79	3/15/79					3/15/79	
HB 443	2/8/79	3/3/79	3/3/79					3/3/79	

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 15, 1979

The thirty-eighth meeting of the Senate Judiciary Committee was called to order on the above date by Senator Everett R. Lensink in Room 331 of the Capitol building at 9:32 a.m.

ROLL CALL:

All members were present with the exception of Steve Brown, who was excused.

CONSIDERATION OF SENATE BILL 394:

This bill is an act to require extension of certain constitutional rights to a youth detained for investigation of questioning under the Montana Youth Court Act. Senator Stimatz stated that this bill was introduced at the request of the youth probation judge in Silver Bow County, and he said that HB 464 was on the same question. There seemed to be some confusion so Senator Lensink said that we would take up another bill while Senator Stimatz checked this out.

CONSIDERATION OF SENATE BILL 382:

Senator Thomas gave an explanation of this bill, which revises the law relating to time limitations for a proceeding alleging a youthful delinquent or in need of supervision, etc.

Steve Nelson, representing the Youth Justice Committee, stated that they were in favor of this bill.

Tom Honzel, representing the Association of County Attorneys, stated that they supported this bill.

Senator Towe moved that the bill do pass. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 386:

This bill is an act to disapprove the supreme court's rules on disqualification and substitution of judges and to adopt the federal rule. Senator Blaylock stated that there were some problems in some of our multiple-judge districts and that the judges will not solve their own problems. He said that he has fought pay raises as he feels that they should get their own house in order before their pay is raised. He stated that lawyers are the only ones who really know how the system works, one lawyer said that he was not afraid to stand up and criticize a judge and that mockery laughter filled the room.

CONSIDERATION OF SENATE BILL 393:

This is an act to generally revise the laws relating to the treatment of the mentally ill. Senator Towe said that he wanted to acknowledge the help of Valencia Lane who drafted most of this bill. Senator Towe went over this bill, section by section. He introduced Dr. Donald Harr, psychologist in Billings.

Dr. Harr, representing the Montana Psychiatrist Association, stated that he saw many instances from the psychiatrist point of view where the person is legally mentally ill, but does not meet the legal definition of "seriously mentally ill". He gave an example of a 40-year old divorcee who had sole custody of minor children and these children were left to care for themselves because of the mother's mental disorder. He also gave an example of a 40-year old single person who was jailed because of mental disorder wherein an attempt had been made two weeks previously to treat him but he did not meet the legal medical definition.

Jim Johnson stated that he represents more of these people from Warm Springs and this is his job. He stated that voluntary commitment can be a very coercive thing. He said that on page 5, lines 16 and 21 that this is a bad amendment and on page 10, this has the effect of committing people to the hospital without a hearing, there is going to be cost of transportation, etc., it is indefinite and he wondered how long a person is going to be held. He also said that on page 11, he had some problems on the reports. He also stated that on page 18, he is somewhat uncertain about this, and he thinks there are going to be patients who want to see their records.

There were no further proponents and no opponents. There were no questions and the hearing was closed.

Dr. Harr also gave his views on the other bill, which would eliminate insanity as a defense and he stated that he had a great deal of concern in this matter. He said that psychologists throughout the state realize the abuse of the plea of legal insanity as a defense. He stated that he is generally in favor of the concept of separating the two.

Senator Towe requested that this bill be held up for awhile and the request was granted.

There being no further business, the meeting was adjourned.

Everett R. Lensink

SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Date 1-11-79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)			✓
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

DATE Feb 15, 1979

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Opp
Donald C. Robinson	Montana Legal Protection Plan	S 386		X
ALAN F. CAIN	Montana Children's Home & Hosp.	S 444		X
Tom Hagel	County Attorneys	386 382 S 386	X	
J. FRED BOURDEAU	County Attorneys Council	386	X	
Jerry Dow Johnson	Montana Legal Services	393	X in part	
Nancy Watson				
Karen Nikota	League of Women Voters			
Donald L. Harris	Mont. Psychiatric Assoc.	393	X	
Steve Nelson	Youth Justice Council	386	X	
Mike Lewis	Attorney General	386	X	
Jesse M. Black	Highways	S 386		X
J.C. Weingartner	State Bar of Mont.	386		
John Hopkins	Cath. Soc. Serv. of Mt.	444		
Mike Abel	Mont. Power Co.	S 386		
Jim Brown	Income Maint. Div.	393		
Bill Simons	Dept. Institutions	393	X	

TO: Senate Judiciary Committee

FROM: James Dorr Johnson
Montana Legal Services Association

RE: S.B. 393 - An act to generally revise the laws relating to the treatment of the mentally ill.

Except for the following provisions we endorse the above bill:

1. On page 5, lines 16-21, the proposed amendment should be stricken. Mental health directors are not experts in medicaid, and other government and private benefits. The effect of this would be to coerce poor people into going to Warm Springs because providers thought they would'nt be able to pay medical bills. It would be grossly unfair to persons who can reconstitute fairly quickly in a community hospital but who don't have a place to return to if they're removed from the community.

2. On page 3, line 25; page 4, line 1 - "severe psychological injury" should be stricken. The phrase is extremely vague and the words will mean what the professionals say they mean. This is an unfortunate innovation where people's freedom is at stake.

3. On page 10, the underlined material in lines 4-7 should be stricken. The effect of this provision would be to commit persons for an indefinite period of time awaiting the actual commitment hearing. It would deny respondents a speedy hearing.

4. On page 11, lines 24 and 25 and page 12 lines 1-3, this provision is intended to eliminate hearsay in professionals' reports taken from hospital records concerning actions of respondents. However, unless the reports are denominated investigative reports under Rule 803 (8), M.C.A. rather than statements for purposes of medical diagnosis under Rule 803 (4), M.C.A. many courts will continue to allow them as exceptions to the hearsay rule.

5. On page 12, line 6 - Professional persons should not be allowed to testify to seriously mentally ill (the ultimate fact) because in it is freely admitted by mainline professionals that they are not experts in predicting dangerous behavior.

Alan Stone, M.D., Professor of Law and Psychiatry at Harvard wrote: "The law...asks the psychiatrist to prognosticate dangerous behavior. That is absurd because it is a rare event and the capacity for such prognostication is absent. What the mental health professional can prognosticate is the mental state and the likley course of the illness of the patient." Mental Health and Law: A System in Transition, N.I.M.H. (1975)

Thus professionals should not be allowed to testify to the ultimate issue.

6. On page 18, lines 12 and 13 - The meaning of this previously was that persons authorized by patients could have records and that records were available to the Board of Visitors. Now it means that records are available to persons only after approval by the Board of Visitors. There is no reason why the Board of Visitors should have this authority.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 18, 1979

The forty-second meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink at 9:36 a.m. in room 331 of the capitol building on the above date.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 476:

Joan Mayer from the Legislative Council offered amendments to this bill. Senator Towe moved that the bill be amended on page 11, line 7, by striking the words, "or accept". Senator Turnage suggested an amendment on line 15, page 11, by adding the following language "(2) refusal to take the examination may not be used in any manner whatsoever." Senator Towe moved the amendments offered by Joan Mayer including the extra ones be adopted. The motion carried unanimously.

Senator Turnage moved in Section 15, page 11, line 16, that Section 15 be reinserted. Section 15: "Admissibility of examination or test results and added further: "Providing the results of the examination or test shall not be admitted as evidence in the courts of Montana or in any administrative proceedings." The motion carried with Senator Van Valkenburg, Senator Towe and Senator Healy voting no.

Senator Towe moved that the bill as amended do pass. The motion carried unanimously.

DISPOSITION OF SENATE BILL 221:

Senator Towe moved the amendments offered by the Department of Revenue. The motion carried unanimously. Senator O'Hara moved amendment #1 of amendments offered by Joan Mayer. The motion carried unanimously. Senator Towe moved the bill do pass as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 228:

Joan Mayer from the Legislative Council offered some amendments, which in effect would incorporate Senate Bill 223 into this bill. Senator Turnage moved that the bill be amended on page 2, line 11, by striking "shall" and inserting "may". The motion carried unanimously.

Senator Towe moved the amendments prepared by Joan Mayer. Senator Towe also moved that on page 1, line 13, following "judgment", the word "shall" be deleted and the word "may" be inserted in lieu thereof. The motion carried unanimously.

Senator Towe moved the amendments prepared by Joan Mayer with the exception of the first one. The motion carried unanimously.

Senator Van Valkenburg moved the bill do pass, as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 386:

Senator Van Valkenburg moved that this bill do not pass. He stated that the Supreme Court had changed this significantly and he felt that they should give them some time to let it work. He said that the present system supplies an effective means to take care of this and felt that it should stand at least for another session. He stated that the Supreme Court talked this over at great length last year.

Senator Towe commented that he was very concerned about this matter in the civil area and that there are judges that are close to certain attorneys.

Senator Brown commented that there is most certainly a delay, and that they lose six to nine months in disqualifications, and that he did not think that people go out and make this an issue in a campaign and he felt that lawyers who are the ones who really know the situation should say that they have problems with certain judges in this State.

Senator Towe commented that you don't do this- that it is just not realistic.

A straw vote was taken on the motion to do not pass and it failed. The Committee decided to take it up later.

DISPOSITION OF SENATE BILL 393:

Senator Turnage moved that this bill be amended on page 5, on line 16, following "treatment" by striking the remainder of line 16 through "region" on line 21. The motion carried unanimous!

Senator Towe moved that the bill be amended on page 4, line 1, by striking "or severe psychological injury". The motion carried unanimously.

Senator Towe moved thatthe bill as amended, do pass.

Senator Van Valkenburg moved to amend the bill on page 10, line 7, following the word "trial" insert "such trial must be held within a reasonable period of time." The motion carried unanimously.

Senator Towe moved that the bill do pass, as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 395:

Senator Olson moved that this bill do pass. The motion carried unanimously.

DISPOSITION OF SENATE BILL 409:

This bill is an act to generally revise the law relating to assaults occuring between spouses, also known as the battered spouse act. According to law now, the divorce courts may be regulated to give awards, stated Senator Towe, and if, at the present time, they do not get a divorce, they are stuck.

Senator Van Valkenburg commented that there is some question as to whether an assault includes a battery.

Senator Van Valkenburg moved that this bill be amended on page 1, line 9, section 1, by inserting the material "There should be no interspousal immunity as to intentional torts". This motion was withdrawn and Senator Van Valkenburg moved that the wording offered by Joan Mayer be adopted. The motion carried.

Senator Turnage moved that this bill be amended on page 3, line 3 and 4 by striking all the new material and insert "unless enjoined by a court"; and strike sections 2 and 3 in their entirety. The motion carried unanimously.

Senator Van Valkenburg moved that the title and catch line be amended in section 1. The motion passed unanimously.

Senator Towe moved that on page 3, line 16, that the bill be amended by striking "whether" and on line 17, strike "separation or otherwise" and insert "order".

Senator Van Valkenburg commented that you are really forcing people to go out and get an attorney.

The motion carried unanimously.

Senator Towe moved that the bill do pass, as amended. The motion carried unanimously.

Date 2/12/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

SENATE

STANDING COMMITTEE REPORT

February 19, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 393

Respectfully report as follows: That Senate Bill No. 393,
introduced bill, be amended to read as follows:

1. Page 4, line 1.
Strike: "or severe psychological injury"

2. Page 5, lines 16 through 21.
Following: "treatment" on line 16
Strike: remainder of line 16 through "region" on line 21

3. Page 10, line 6.
Following: "state"
Strike: "hopital"
Insert: "hospital"

4. Page 10, line 7.
Following: "trial."
Insert: "Such trial must be held within a reasonable period of time.

And, as so amended,
DO PASS

EVERETT R. LENSINK, Chairman.

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Helena, Mont.

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AUG 10 1979

OF MONTANA

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE

46th Legislative Session
January 3, 1979 to April 20, 1979

ROBERT L. ANDERSON
THOMAS R. CONROY
AUBYN CURTISS
FRED DAILY
WILLIAM DAY
RALPH EUDAILY
POLLY HOLMES
DENNIS IVERSON
MICHAEL KEEDY
DANIEL KEMMIS
KERRY KEYSER
EARL LORY
ROBERT PAVLOVICH
JONAS ROSENTHAL
AUDREY ROTH
CARL SEIFERT
JACK UHDE
WES TEAGUE, Vice-chairman
JOHN P. SCULLY, Chairman

MARY ELLEN CONNELLY, Secretary
LARRY WEINBERG, Staff Attorney

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 301	revise - child abuse, neglect, etc.	2/27	Lensink	Monday /12	as amended be concurred	3/17
SB 348	provide for damages in wrongful death actions	2/27	VValkenburg	Friday /9	as amended not concurred	3/16
SB 386	disapprove supreme court's rules on judges	2/27	Blaylock	Tues. /13	as amended not concurred	3/14
SB 393	revise - laws relating to mentally ill, etc.	2/27	Towe	Monday /12	as amended be concurred	3/23
SB 409	revising - assaults occurring between spouses,	2/27	Regan	Monday /12	as amended be concurred	3/14
SB 476	license persons - lie detectors, forensic polygraphs, etc.	2/27	VValkenburg	Tues. /13	not concurred	3/14

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
March 12, 1979

The regular meeting was called to order by Chairman John Scully at 8:00 a.m. in room 436 of the Capitol Building on Monday, March 12. All members were present except Representative Daily, absent and Representatives Roth and Anderson, who came in later.

Scheduled for hearing were Senate Bills 54, 393, 221, 491, 511, 283, 284, 301 and 409.

SENATE BILL NO. 409: Senator Regan. This bill revises the law relating to assault between spouses. I direct your attention to page 3, lines 17 and 18 concerning spouses living apart.

CAROL MITCHELL: Missoula Attorney. About a year and 1/2 ago there were contracts with the state to undertake a study on battered spouses. What we intended to do was to bring national research together with Montana research. The problem is pervasive. We are not talking about 1 out of 100, we are talking about 14 to 20% of married women. We have violence not in just one direction. Normally we define as a crime , the civil action It is currently happening across the country that we are abolishing that old common law doctrine.

SHARON McVICKER: Great Falls. She explained that she was there as a battered spouse and gave the details of herself being thrown through a window by her husband. When I called the police, because we were married they would take no action. I think it is very important for you to know that women and wives are people too, and that they should have the right to protect themselves. The cycle is always repeated, the husband feels guilty, the wife forgives him and then it happens again.

MATT BOWER: Attorney. I represented Mrs. McVickers, and I have her permission to speak. She has now a serious permanent injury. She has no cause of action under existing state law.

JESSICA HUNTER: Missoula. I want to talk about SB 243, which will be heard tomorrow, also. I was married for 34 years to a college professor who was an alcoholic. I was admitted to a hospital 17 times, so please vote to try and give us some protection. It happens in the best of families.

ANN OWENS: Helena. I am dealing with the rape aspect of this bill. I have been separated since last May and my husband came to where I work and I was stabbed 17 times, and then he raped me. Rape is an act of violence. It is wrong even if you are married to the man.

CAROL MITCHELL: Attorney. I think it is pretty obvious the section as amended is inadequate.

REPRESENTATIVE SCULLY: Why is it necessary to hold a temporary injunction to notice?

SENATOR TOWE: Lets make it clear that if you have the facts sufficient to get a temporary restraining order, the temporary restraining order and the temporary injunction is the same thing. Lets make it clear that they are entitled together and then the injunction would be after a hearing.

REPRESENTATIVE SCULLY: You already have the order if you can prove. Senator Towe explained the temporary restraining order and injunction, with notice, without notice and after trial.

MR. HOLDEN: He explained how the department files their case.

REPRESENTATIVE SCULLY: Have you ever filed a temporary injunction without notice and been denied one. The answer was "no", and then Mr. Scully asked why they hadn't done so. There was general confusion and noone could answer the question as to why this had not been done.

The hearing closed on Senate Bill 54.

SENATE BILL NO. 393: Senator Towe. He went through the bill and explained it. On page 2, he talked about the patient involvement. On page 3, the term "responsible person" is to help the attorney and the court proceedings. We changed that terminology because of the responsibility needed to be clarified. The term "seriously mentally ill" on the botton of page 3 also should be explained. This would define further who could be committed. On the bottom of page 4 and through page 5, voluntary admission, we were stating that it should be at the time and in this amendment we are stating that it should be within 12 hours. On the bottom of page 5, it provides for a release within 5 days and we added some language. On the bottom of page 6, this is the notice to the minor of his rights. On the bottom of page 8, the waiver of rights, we are now providing that if a person is not making a knowing and responsible decision this would not waive the right to counsel. On the bottom of page 9, where the individual is detained once the proceedings have been brought where ought he be detained. This explains that. There is a distinction here when this would apply. He went on to talk of a jury trial and cases where it has been abused. Page 15 covers the hearing that is made following the six months commitment. There is no involuntary commitment in the state of Montana for more than one year. He explained the civil rights on page 16. The Senate Committee dealt with two items. One,

the addition of a severe psychiatric injury, in addition to the physical, and how to determine a person is severely psychologically injured. Number two, on page 5, there was another question raised. This is the voluntary commitment. He then discussed who should pay the cost, the state or the patient. We make no recommendation one way or the other.

DR. DON HAAR: Billings, Montana Psychiatric Association. Our concern primarily has to do with a right to treatment. He talked about physical injury and psychiatric problems. He gave definitions and examples. He discussed the part of page 5 that the Senate deleted. The next item is on page 10, to do with the jury trial, because we have had some very difficult situations. It becomes quite a problem when a case is dismissed rather than sent up to trial. On page 12, line 7, is really to provide the person testifying to the ultimate issue of a person being mentally ill. He explained what a professional person could testify to.

SENATOR TOWE: On page 11 and 12 there are two things. At the present time when a petition is filed charging someone with serious mentally ill, that sometimes has a lot of hearsay in it. Hearsay is not admissable in a court of law within certain exceptions. He explained. Now, the other item is the ultimate issue. It is permissable in Montana for a psychiatrist to be asked only one question. At this point that could stop the trial. That is wrong. It should be required that it should be followed up with admissable evidence.

JIM JOHNSON: I have the largest percentage of these cases in the state. I am the doctor at Warm Springs State Hospital. On page 5, this is a matter of finance. The mental health director should not be certifying that people should go to the state hospital. I would hope that you would leave it at that and not amend it further. The bill has real problems with definitions. On page 10 the amendment with regards to jury trial. I don't think that is necessary. The system is going to forget about these people if they ask for a jury trial and then only committed. I would hope that you would put a very specific period of time so that they would have that protection. The other thing that might make it better would be to denominate these reports as medical records. On page 12, line 7, asked that between the word "may" and "testify" you add the word "not". He explained the reasoning. He discussed the Board of Visitors. I seriously doubt that they should have the authority to approve the records. Exhibit #9.

ARCHIE McFALE: Superintendent, State Hospital. This bill in relation to the hearsay evidence treats emotional and mental evidence like it did not exist. He

discussed further that hearsay evidence and the danger that might be involved. The patient has to be notified that anything they say will be used against them. Right now we are using the mental status exam when we go to court.

SENATOR TOWE: I would agree about the jury trial. We have to make some kind of agreement for payment. This does not affect what is admissable or not admissable. This only applies to reports. The notification deals with the privilege. All you have to do is make it clear that at this time you are only making an evaluation. It is not clear that at the present time they could testify even if they have no evidence.

REPRESENTATIVE LORY: On page 17, what about introducing the word "not", doesn't that change the meaning? Senator Towe talked about clarifying this. He went on to talk about the Code Commission.

With no other discussion the hearing closed on Senate Bill 393.

SENATE BILL NO. 283: Senator Lowe. This covers products liability. This bill is certainly not trying to do away with products liability. What we are trying to do is get some kind of a handle on it to keep our economy good. Insurance to cover product liability has become so expensive that it is almost unavailable. He gave an example of football helmets. If you will look at the bill you will see that we have pretty well maimed it but we would put back in the definition because we think that it is needed.

TOM HARRISON: Montana Equipment Dealers Association. He presented written testimony, exhibit #10 attached. The first section in the last section should be reinstated. It should be amended, unless the suit was based upon a specific warranty. Also on line 25 of the 1st page, reinstate the definition. I have that language prepared.

LARRY HUSS: Montana Auto Dealers Association Attorney I am a plaintiff attorney and not a defense attorney. We believe that it fixes liability where fault exists. The Senate Committee did a disservice to the bill. The manufacturer should be responsible for the ultimate liability. On page 4 and 5, it is our request that you reinsert those provisions and also the definitions. He discussed the plaintiff and also the responsibility of the manufacturer. It sets the responsibility for the ultimate liability. Then there has to be some method of determining what the ratio of liability will be. These simply fix the ultimate responsibility where it belongs.

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
March 23, 1979

Following the regular meeting the Judiciary Committee was called to order by Chairman John Scully at 10:35 a.m. in room 436 of the Capitol Building. All members were present except Representatives Day and Holmes, both excused.

The meeting was called to take action on HOUSE JOINT RESOLUTION 59, sponsored by Representative Gould, and SENATE BILL NO. 202, Senator Van Valkenburg.

REPRESENTATIVE GOULD: What you have here is a request for an interim study and the reason for this request is very valid and very important. What Senate Bill 21 would have done was make a minimum sentence for rape, or assault with a knife. He explained what happened to the bill. I carried a petition with me when I was going door to door and campaigning. He discussed the bill SB 21 and felt it wasn't much of a bill. What the public is asking for is honesty in sentencing. He discussed kinds of crime. It is now time to have a study to find out what needs to be done in this area. I feel that it is important that we as legislators do it rather than have the public do it.

REPRESENTATIVE KEMMIS: Is there any reason that the resolution has to refer to mandatory and not just sentencing. I guess my feeling is that it should take account of aspects of sentencing.

REPRESENTATIVE GOULD: Yes, that is fine with me.

REPRESENTATIVE ROTH: If you remove the mandatory would you have something else, and Representative Kemmis commented, I guess the best way would be to just remove it.

There was no other discussion and the hearing closed on HJR 59.

SENATE BILL NO. 202: Senator Van Valkenburg. This bill would provide for a fourth district court judge in the fourth judicial district. In the 1st, 2nd, 11th, 16th, and 18th districts, two judges each and in the 8th district, three judges each and in the 4th and 13th districts, four judges each. I don't want to do anything that might jeopardize our getting a judge. The best thing to do would be to just add a judge to the judicial district. The figures we used were from the Supreme Court, but one significant difference would be the ratio of district to judge. He gave figures of number of lawyers per judge that would bring the ratio in line with the statewide average. He discussed a possible amendment.

There was a request by Senator Turnage to take his bill off the table and move it back to remain in Senate Judiciary.

REPRESENTATIVE KEMMIS: I wonder if you don't need a bill to get rid of some lawyers in Missoula County. General laughter.

There was no other discussion and the hearing closed on Senate Bill 202.

10:30 a.m.
EXECUTIVE SESSION

SENATE BILL NO. 393: Representative Kemmis will give a report from the subcommittee. He said that following their discussion the vote ended up a tie. It would stay in the bill that a professional person could still testify.

Representative Kemmis moved the adoption of the subcommittee amendments. The motion to amend carried with the vote unanimous.

Representative Kemmis moved "be concurred in as amended". The motion carried with Representatives Keyser, Pavlovich and Curtiss voting "no". Representative Kemmis will carry on the floor.

SENATE BILL NO. 202: Discussion was held concerning what the bill does and doesn't do.

Representative Uhde moved to create the new district in Lake County.

Representative Kemmis, questioned whether this was within the scope of the title. We may need a rules decision. Then followed discussion about where the judge would have his office, and about who would elect the judge.

REPRESENTATIVE ANDERSON: I can't see why we should leave the judge in Missoula. I know those counties are growing and it wouldn't be long before they will be needed. I support the new district.

REPRESENTATIVE KEYSER: I very definitely feel that we could do this within the title. I move a substitute motion that we provide a fourth judge but state that he must conduct his business in Lake County.

REPRESENTATIVE KEEDY: Is that what 219 does, the Turnage bill?

REPRESENTATIVE SCULLY: Yes, that is what the bill does.

SENATE BILL NO. 393

INTRODUCED BY TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE TREATMENT OF THE MENTALLY ILL; AMENDING SECTIONS 53-21-102, 53-21-103, 53-21-111, 53-21-112, 53-21-115, 53-21-119, 53-21-120, 53-21-126 THROUGH 53-21-128, 53-21-141, 53-21-165, AND 53-21-188, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(6) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. No correctional institution or facility or jail is a mental health facility within the meaning of this part.

(7) "Next of kin" shall include but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(8) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(9) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(10) "Professional person" means:

(a) a medical doctor; or

(b) a person trained in the field of mental health and certified by the department in accordance with standards of professional licensing boards, federal regulations, and the joint commission on accreditation of hospitals.

(11) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional

REFERENCE BILL

person.

(12) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously mentally ill.

(13) "~~Responsible-person~~ Friend of respondent" means any person willing and able to ~~assume responsibility for~~ assist a seriously mentally ill person or person alleged to be seriously mentally ill, in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the ~~including~~ next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a ~~responsible-person~~ friend of respondent set out in this part. Only one person may at any one time be the ~~responsible-person~~ friend of respondent within the meaning of this part. In appointing a ~~responsible-person~~ friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the ~~responsible-person~~ friend of respondent.

(14) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health. For this purpose, injury means physical

injury or severe psychological injury. No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part.

(15) "State hospital" means the Warm Springs state hospital."

Section 2. Section 53-21-103, MCA, is amended to read:

"53-21-103. Court records to be kept separate. Records and papers in proceedings under this part shall be maintained separately by the clerks of the several courts. Five days prior to the release of a respondent or patient committed to a mental health facility, the facility shall notify the clerk of the court, and the clerk shall immediately seal the record in the case and omit the name of the respondent or patient from the index or indexes of cases in the court unless the court orders the record opened for good cause shown."

Section 3. Section 53-21-111, MCA, is amended to read:

"53-21-111. Voluntary admission. (1) Nothing in this part may be construed in any way as limiting the right of any person to make voluntary application for admission at any time to any mental health facility or professional

person. An application for admission to a mental health facility shall be in writing on a form prescribed by the facility and approved by the department. It is not valid unless it is approved by a professional person and a copy is given to the person voluntarily admitting himself. ~~The form shall contain a~~ A statement of the rights of the person voluntarily applying for admission, as set out in this part, including the right to release shall be furnished to the patient within 12 hours.

(2) Any applicant who wishes to voluntarily apply for admission to the state hospital shall first obtain certification from a professional person that the applicant is suffering from a mental disorder and that the facilities available to the mental health region in which the applicant resides are unable to provide adequate evaluation and treatment~~, except such certification is not necessary if the applicant obtains certification from the regional mental health director of his mental health region that the applicant is financially unable to receive evaluation and treatment from the facilities available to the mental health region~~. EXCEPT SUCH CERTIFICATION IS NOT NECESSARY IF THE APPLICANT OBTAINS CERTIFICATION FROM THE REGIONAL MENTAL HEALTH DIRECTOR OF HIS MENTAL HEALTH REGION THAT THE APPLICANT IS FINANCIALLY UNABLE TO RECEIVE EVALUATION AND TREATMENT FROM THE FACILITIES AVAILABLE TO THE MENTAL HEALTH

REGION.

(3) An application for voluntary admission shall give the facility the right to detain the applicant for no more than 5 days, excluding weekends and holidays, past his written request for release. A mental health facility may adopt rules providing for detention of the applicant for less than 5 days. The facility must notify all applicants of such rules and post such rules as provided in 53-21-168.

(4) Any person voluntarily entering or remaining in any mental health facility shall enjoy all the rights secured to a person involuntarily committed to the facility."

Section 4. Section 53-21-112, MCA, is amended to read:

"53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a minor who is 16 years of age or older may consent to receive mental health services to be rendered by a facility or a person licensed to practice medicine or psychology in this state.

(2) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment shall be for the same period of time as that for an adult. A minor voluntarily admitted shall have the right to be released within 5 days of his request as provided in 53-21-111(3). The minor himself may make such request. Unless there has been a periodic review

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and a voluntary readmission consented to by the minor patient and his counsel, voluntary admission terminates at the expiration of 1 year. Counsel shall be appointed for the minor at the minor's request or at any time he is faced with potential legal proceedings.

(3) If, in any voluntary admission for any period of time to a mental health facility, a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the admission shall be treated as an involuntary commitment. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary admission of a minor to a mental health facility. The notice shall be explained to the minor by the professional person approving the application."

Section 5. Section 53-21-115, MCA, is amended to read:

"53-21-115. Procedural rights. In addition to any other rights which may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has the following rights:

(1) the right to notice reasonably in advance of any hearing or other court proceeding concerning him;

(2) the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding concerning him;

(3) the right in any hearing to cross-examine witnesses;

(4) the right to be represented by counsel;

(5) the right to remain silent;

(6) the right in any hearing to be proceeded against according to the rules of evidence applicable to civil matters generally;

(7) the right to view and copy all petitions on file with the court concerning him;

(8) the right to be examined by a professional person of his choice when such professional person is willing and reasonably available;

(9) the right to be dressed in his own clothes at any hearing held pursuant to this part; and

(10) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing held pursuant to this part."

Section 6. Section 53-21-119, MCA, is amended to read:

"53-21-119. Waiver of rights. (1) A person may waive his rights, or his if the person is not capable of making an intentional and knowing decision, these rights may be waived by his counsel and responsible person acting together if a

record is made of the reasons for the waiver. The right to counsel may not be waived. The right to treatment provided for in this part may not be waived.

(2) The right of the respondent to be physically present at a hearing may also be waived by his attorney and the responsible person with the concurrence of the professional person and the judge upon a finding supported by facts that:

(a) the presence of the respondent at the hearing would be likely to seriously adversely affect his mental condition; and

(b) an alternative location for the hearing in surroundings familiar to the respondent would not prevent such adverse effects on his mental condition.

(3) (a) In the case of a minor, provided that a record is made of the reasons for the waiver, his rights may be waived by the mutual consent of his counsel and parents or guardian or guardian ad litem if there are no parents or guardian.

(b) If there is an apparent conflict of interest between a minor and his parents or guardian, the court shall appoint a guardian ad litem for him."

Section 7. Section 53-21-120, MCA, is amended to read:

"53-21-120. Detention to be in least restrictive environment -- preference for mental health facility --

court relief. (1) A person detained pursuant to this part shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part shall be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and trial cannot be held within 7 days, the individual may be sent to the state ~~hospital~~ HOSPITAL until time of trial if arrangements can be made to return him to trial. SUCH TRIAL MUST BE HELD WITHIN ~~A REASONABLE PERIOD OF~~ TIME 30 DAYS. THE COUNTY OF RESIDENCE SHALL PAY THE COST OF TRAVEL AND PROFESSIONAL SERVICES ASSOCIATED WITH THE TRIAL. No person may be detained in any hospital or other medical facility which is not a mental health facility unless such hospital or facility has agreed in writing to admit the person.

(3) A person may be detained in a jail or other correctional facility only if no mental health facility is available or if the available mental health facilities are inadequate to protect the person detained and the public. As soon as a mental health facility becomes available or the situation has changed sufficiently that an available mental

health facility is adequate for the protection of the person detained and the public, then the detained person shall be transferred from the jail or correctional facility to the mental health facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain."

Section 8. Section 53-21-126, MCA, is amended to read:

"53-21-126. Trial or hearing on petition. (1) The respondent shall be present unless his presence has been waived as provided in 53-21-119(2), and he shall be represented by counsel at all stages of the trial. The trial shall be limited to the determination of whether or not the respondent is seriously mentally ill within the meaning set forth in this part.

(2) The standard of proof in any hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters, except that mental disorders shall be evidenced to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others shall be evidenced by overt acts, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court shall be present for the trial and subject to cross-examination. The trial shall be governed by the Montana Rules of Civil Procedure except that, if tried by a jury, at least two-thirds of the jurors must concur on a finding that the patient respondent is seriously mentally ill. The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report. The court may order the trial closed to the public for the protection of the respondent.

(5) The professional person may testify as to the ultimate issue of whether the respondent is seriously mentally ill. This testimony is insufficient unless accompanied by evidence from the professional person or others that:

(a) the respondent is suffering from a mental disorder; and

(b) the mental disorder has resulted in self-inflicted injury or injury to others or the imminent threat thereof or has deprived the person afflicted of the ability to protect his life or health.

~~(4)~~(5) The court, upon the showing of good cause and

when it is in the best interests of the respondent, may order a change of venue."

Section 9. Section 53-21-127, MCA, is amended to read:

"53-21-127. Posttrial disposition. (1) If, upon trial, it is determined that the ~~patient~~ respondent is not seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed.

(2) (a) If it is determined that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more

than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill."

Section 10. Section 53-21-128, MCA, is amended to read:

"53-21-128. Petition for extension of commitment period. (1) (a) Not less than 2 calendar weeks prior to the end of the 3-month period of detention provided for in 53-21-127(2), the professional person in charge of the patient at the place of detention may petition the court for extension of the detention period. The petition shall be accompanied by a written report and evaluation of the patient's mental and physical condition. The report shall describe any tests and evaluation devices which have been employed in evaluating the patient, the course of treatment which has been undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, his next of kin, if reasonably available, the responsible person appointed by the court, and the patient's counsel. If any person so notified requests a hearing prior to the termination of the previous detention authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) Procedure on the petition for extension when a hearing has been requested shall be the same in all respects as the procedure on the petition for the original 3-month commitment except the patient is not entitled to trial by jury. The hearing shall be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any, shall be paid by the county that paid the same costs in the initial commitment proceedings.

(d) If upon the hearing the court finds the patient not seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed. If the

court finds that the patient continues to suffer from serious mental illness, the court shall order commitment, custody in relatives, outpatient therapy, or other order as set forth in 53-21-127(2) except that no order may affect his custody for more than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall not order continuation of an alternative which does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) Further extensions may be obtained under the same procedure described in subsection (1) of this section except that the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1) of this section, including a statement of the findings required by subsection (1)."

Section 11. Section 53-21-141, MCA, is amended to read:

"53-21-141. Civil and legal rights of person committed. (1) Unless specifically stated in an order by the

court, a person involuntarily committed to a facility for a period of evaluation or treatment does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part except insofar as it may be necessary to detain the person for treatment, evaluation, or care. All communication between an alleged mentally ill person and a professional person is privileged under normal privileged communication rules unless it is clearly explained to the person in advance that the purpose of an interview is for evaluation and not treatment.

(2) Whenever a person is committed to a mental health facility for a period of 3 months or longer, the court ordering the commitment may make an order stating specifically any legal rights which are denied the respondent and any legal disabilities which are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion of the involuntary commitment if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of involuntary commitment may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) A person who has been committed to a mental health

facility pursuant to this part is automatically restored upon the termination of the commitment to all of his civil and legal rights which may have been lost when he was committed. This subsection does not affect, however, a guardianship or conservatorship created independently of the commitment proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. A person who leaves a mental health facility following a period of evaluation and treatment shall be given a written statement setting forth the substance of this subsection.

(4) A person committed to a mental health facility prior to July 1, 1975, enjoys all the rights and privileges of a person committed after that date."

Section 12. Section 53-21-165, MCA, is amended to read:

"53-21-165. Records to be maintained. Complete patient records shall be kept by the mental health facility and shall be available to any person authorized ~~in writing~~ by the patient in writing to receive these records and upon approval of the authorization by the board. The records shall also be made available to any attorney charged with representing the patient or any professional person charged with evaluating or treating the patient. These records shall include:

(1) identification data, including the patient's legal status;

(2) a patient history, including but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior hospitalization;

(3) the chief complaints of the patient and the chief complaints of others regarding the patient;

(4) an evaluation which notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive rather than interpretative fashion;

(5) a summary of each physical examination which describes the results of the examination;

(6) a copy of the individual treatment plan and any modifications thereto;

(7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan which analyzes the successes and failures of the treatment program and directs whatever modifications are necessary;

(8) a copy of the individualized after-care plan and any modifications thereto and a summary of the steps that

have been taken to implement that plan;

(9) a medication history and status which includes the signed orders of the prescribing physician. The staff person administering the medication shall indicate by signature that orders have been carried out.

(10) a detailed summary of each significant contact by a professional person with the patient;

(11) a detailed summary, on at least a weekly basis, by a professional person involved in the patient's treatment, of the patient's progress along the treatment plan;

(12) a weekly summary of the extent and nature of the patient's work activities and the effect of such activity upon the patient's progress along the treatment plan;

(13) a signed order by a professional person for any restrictions on visitations and communications;

(14) a signed order by a professional person for any physical restraints and isolation;

(15) a detailed summary of any extraordinary incident in the facility involving the patient, to be entered by a staff member noting that he has personal knowledge of the incident or specifying his other source of information and initialed within 24 hours by a professional person; and

(16) a summary by the professional person in charge of the facility or his appointed agent of his findings after the 30-day review provided for in 53-21-163."

Section 13. Section 53-21-188, MCA, is amended to read:

"53-21-188. Maintenance of indigent patients on discharge. Prior to the discharge of a committed patient from a mental health facility, the professional person in charge of the facility shall notify the welfare department of the county from which the patient was committed. The county welfare department shall at once ascertain whether the discharged patient is in financial need. If the patient is found to be in financial need, the county welfare department shall properly care for and maintain the discharged patient under the laws of this state relating to public assistance until the patient is able to care for himself or until another provision has been made for care of the patient."

Section 14. Instructions to the code commissioner. All references to "responsible person" in Title 53, chapter 21, shall be changed to "friend of respondent" by the code commissioner.

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